

REMARKS/ARGUMENTS

This Amendment is responsive to the Office Action dated April 21, 2008. Claims 1-5 and 9-33 were pending in the application with claims 19-29 being withdrawn from consideration. In the Office Action, claims 1-5, 9-18 and 30-33 were rejected. In this amendment, Claims 1-3, 12, 16 and 18 were amended, and Claims 34-36 were added. Claims 1-5, 9-18 and 30-36 remain for consideration.

Applicant submits that claims 1-5, 9-18 and 30-36 are in condition for allowance and requests withdrawal of the rejections in light of the following remarks.

A. Claim Rejections Under 35 U.S.C. §112, first paragraph

Claims 1-5, 9-17 and 30-32 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Specifically, the Examiner stated that the specification as originally filed does not provide support for the limitation that "the film or coated laminate has a minimum moisture vapor transmission rate of greater than 20 g/m²/day but less than 500 g/m²/day."

As stated in previous office actions, Applicant respectfully disagrees with the Examiner but in order to expedite this application Applicant has amended Claim 1. Accordingly, the above rejection is traversed.

B. Claim Rejections Under 35 U.S.C. § 103(a)

1. Claims 1-2, 4-5, 10, 12-14, 17, 18, 30 and 32-33 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger").

2. Claim 3 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger") as set forth above, and further in view of U.S. Patent No. 4,511,619 to Kuhnel et al. (hereafter "Kuhnel").

3. Claims 11 and 15 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger") as set forth above, and further in view of U.S. Patent No. 6,300,257 to Kirchberger et al. (hereafter "Kirchberger").

4. Claim 16 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 5,691,034 to Krueger (hereafter "Krueger") as set forth above, and further in view of EP 1,245,620.

5. Claims 1-2, 4-5, 10, 12-14, 17, 18, 31 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 4,282,283 to George et al. (hereafter "George").

6. Claim 3 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 4,282,283 to George et al. (hereafter "George") as set forth above, and further in view of U.S. Patent No. 4,511,619 to Kuhnel et al. (hereafter "Kuhnel").

7. Claims 11 and 15 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone")

in view of WO 9637668 and U.S. Patent No. 4,282,283 to George et al. (hereafter "George") as set forth above, and further in view of U.S. Patent No. 6,300,257 to Kirchberger et al. (hereafter "Kirchberger").

8. Claim 16 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,645,336 to Albertone et al. (hereafter "Albertone") in view of WO 9637668 and U.S. Patent No. 4,282,283 to George et al. (hereafter "George") as set forth above, and further in view of EP 1,245,620.

Applicant submits that independent claims 1 and 18 are patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger and George -- either taken alone or in combination.

Applicant's invention as recited in the independent claims (Claims 1 and 18) is directed toward a non-asphaltic underlayment. For example, independent claim 1 specifies that the underlayment comprises (1) a glass fiber-based substrate, (2) a coatable laminate or a breathable thermoplastic film, and (3) an adhesion improvement component (see ¶¶ [0034]-[0037]).

Claim 1 further specifies that the adhesion improvement component improves adhesion between the breathable thermoplastic film or coated laminate and the glass fiber-based substrate. (See paragraphs [0034]-[0037]).

Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger and George do not disclose adhesion improvement component improves adhesion between the breathable thermoplastic film or coated laminate and the glass fiber-based substrate.

Examiner states that "Albertone...teaches how to make [a] breathable film and teaches that the fabric layer can be 'any fabric'." Examiner also admits that Albertone "does not specifically teach that the substrate is a glass fiber fabric." Examiner then relies on WO '668 for

the teaching that mineral fibers are equivalent to organic fibers. WO '668, however, merely mentions that the support layer may be a mineral fiber but does not teach or suggest to one skilled in the art how to adhere the breathable thermoplastic film to the glass fiber as claimed in claim 1 of the application. Examiner then relies on Krueger for the teaching of tie layers such as silanes and maleic anhydride modified polymers to adhere the breathable thermoplastic film to the glass fiber.

Based on these references, Examiner believes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed (a) the glass fiber substrate of WO'688 with (b) the breathable film of Albertone and (c) the tie layers of Krueger.

The problem with adding a tie layer, however, is that varying the thickness of the materials layered on the substrate has a direct impact on the MVTR of the underlayment. So, in order to decrease the thickness of the underlayment, Applicant found that adding certain components to either the film and/or the glass substrate can improve adhesion characteristics and increase abrasion resistance. Accordingly, Applicant added an adhesion improvement component directly to the film and/or substrate and **eliminated** the need for the tie layer. But a tie layer may be incorporated into the underlayment if a higher MVTR is desired (see ¶ [0022], [0041]-[0042]; and Claims 13-15)

This is differentiated from the cited references because none of the cited references teach or suggest adding an adhesion improvement component to the breathable thermoplastic film that improves adhesion between the breathable thermoplastic film and the glass fiber-based substrate.

Since Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger and George do not disclose an adhesion improvement component that improves adhesion between the breathable thermoplastic film and the glass fiber-based substrate, Applicant submits that independent claims 1 and 18 are patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger and George -- either taken alone or in combination -- on at least this basis.

Claims 2-5, 9-17, 30-32 and 34-36 depend on claim 1. Since claim 1 is believed to be patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger and George, claims 2-5, 9-17, 30-32 and 34-36 are believed to be patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger and George on the basis of their dependency on claim 1.

Claim 33 depends on claim 18. Since claim 18 is believed to be patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger and George, claim 33 is believed to be patentable over Albertone, Kuhnel, Kirchberger, WO 9637668, EP 1,245,620, Krueger and George on the basis of its dependency on claim 18.

CONCLUSION

In view of the aforementioned remarks and amendments, the Applicant believes that each of the pending claims is in condition for allowance. If, upon receipt and review of this amendment, the Examiner believes that the present application is not in condition for allowance and that changes can be suggested which would place the claims in allowable form, the Examiner is respectfully requested to contact Applicant's undersigned counsel at the number provided below.

The Director is hereby authorized to charge any fees that may be associated with this filing or credit any overpayment of same, to Deposit Account No. 03-1250, under Reference No. FDN-2815, Customer No. 43,309.

Respectfully submitted,

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